IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 773 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
KUMPABHAI SONAJI & 2 - Opponent(s)

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Appearance :
MR KC SHAH APP for Appellant(s) : 1,
MR MEHUL H RATHOD for Opponent(s) : 1, 3,
None for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 04/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. The appellant – State has filed this

appeal under Section 378 of the Code of Criminal Procedure, 1973 and challenged the judgment and order of acquittal rendered on 28-11-2005 by learned Addl. Sessions Judge, 5th Fast Track Court, Banaskantha at Diyodar in Sessions Case No.125 of 2003 acquitting the respondents accused for the offences punishable u/ss 489(B), 489(C) and 114 of the I.P. Code,

2. We have called for the Record and Proceeding from the Trial Court and the same is available with us. The learned A.P.P. Mr. K.C. Shah for the State and advocate Mr. Mehul H. Rathod for the respondents have provided this Court with necessary copies of the evidence and documents. Appeal is required to be heard finally and upon the request of the learned Advocates for the parties, the appeal is admitted and learned advocate Mr. Mehul H. Rathod for the respondent waives service on behalf of the respondents. He submits that he shall file his Vakalatnama in due course.

3. In brief, prosecution case was that complainant K.B. Khant, Police Sub-Inspector,

Palanpur, District Banaskantha received information on 29-4-2003 that Kumpaji Sonaji of village Liladhar running business of grocery, traffics in and uses as genuine counterfeit currency notes in denomination of Rs.500/- and was in possession of such counterfeit currency notes knowing that they were counterfeit notes intending to use the same as genuine. On receipt of this information, P.S.I. Khant with other staff members went to village Liladhar. After taking two panchas, they went to the shop of respondent accused Kumpaji Sonaji and search of his person was made in presence of the panchas. During search, three currency notes in denomination of Rs.500/- were recovered from pocket of his Jacket. The currency notes were different in size from Government currency notes. On inquiry with regard to said currency notes Kumpaji revealed that one such currency note was given by his maternal uncle Patel Mulaji Dharmaji before about 8 days for purchase of 'bidi' and matchbox and other two currency notes were given by Rameshkumar Rupshibhai Doshi of same village in grocery business transaction. Thereafter, search of shop, field and

residence of Kumpaji was carried out. However, nothing incriminating was found. A panchnama in respect of recovery of currency notes was drawn and complaint with regard to counterfeit currency notes was lodged by P.S.I. Khant before Diyodar Police Station. On the basis of complaint offence was registered as I – CR No. 37 of 2003 for offences punishable u/ss 489(B), 489 (C) and 114 of the I.P. Code and investigation was started.

4. On completion of investigation, charge sheet was laid before learned J.M.F.C., Diyodar for the aforesaid offences. As the offence was exclusively triable by Sessions Court, the case was committed to the Sessions Court, Banaskantha at Palanpur and it was registered as Sessions Case No.125 of 2003. Thereafter the case was transferred to the Court of learned Addl. Sessions Judge, 5th Fast Track Court, Banaskantha at Diyodar who framed charge for the offences punishable u/s 489(B), 489(C) and 114 of the I.P. Code against the respondent – accused. The charge was read over and explained to them. The respondents – accused pleaded not guilty to

the charge and claimed to be tried. Therefore, prosecution adduced documentary as well as oral evidence. On completion of recording of evidence, incriminating circumstances appearing in the evidence against the respondents – accused were explained to them. The respondents – accused explained the incriminating circumstances in their further statement recorded u/s 313 of the Code of Criminal Procedure, 1973.

5. The respondent No.1 Kumpaji Sonaji in his further statement denied having committed the offence and stated that he is an agriculturist studied upto 6th standard and does not know about counterfeit currency notes and has not made any effort to use the same.

6. The respondent No. 2 Rameshbhai Rupshibhai Doshi in his further statement stated that he is a respectable businessman in the village and is doing business since last 30 years; that he has been falsely implicated in the offence with a view to harass him on account of business rivalry by Kumpaji Sonaji and he has not made any transaction

and he is innocent.

7. The respondent No. 3 Mavaji Mulaji Patel has in his further statement explained that he is an agriculturist and he has been falsely implicated by the complainant.

8. After hearing learned A.P.P. for the State and learned advocate for the accused, trial Court found that prosecution failed to prove the charge levelled against the respondent accused and consequently acquitted them for the offences charged against them. Being aggrieved and dissatisfied by the impugned judgment, State has preferred this appeal.

9. After hearing learned A.P.P. for the State, we have admitted the appeal. As the record and proceedings were called for, with the consent of the learned A.P.P. and the learned advocate for the accused Mr. Mehul H. Rathod, we have finally heard and decided this appeal.

10. The prosecution case is that the respondent – accused Mavaji gave counterfeit

currency note in the denomination of Rs.500/- to respondent accused Kumpaji on 29-11-2003 at 11-15 hours for purchase of Bidi and matchbox knowing that it was counterfeit currency note and respondent – accused Rameshbhai gave counterfeit currency note in the denomination of Rs.500/- to respondent – accused Kumpaji in grocery business.

11. Investigating Officer P.W. 6 Kalusinh Bhathisinh Khant, examined at Exh. 16, in his deposition admitted that except statement of co-accused Kumpaji there is no evidence to indicate that two counterfeit currency notes were given by respondent – accused Rameshkumar Rupshibhai Doshi to respondent accused Kumpaji Sonaji. It is settled proposition that statement of co-accused made during the course of investigation is inadmissible in evidence. Therefore, except the statement of co-accused there is no other independent and cogent evidence to implicate respondent – accused Rameshbhai Rupshibhai Doshi in the offence. Similarly, there is no evidence to indicate that respondent accused Mavaji Mulaji gave one counterfeit currency note to respondent accused – Kumpaji in

grocery business. Therefore, the learned trial Judge was justified in recording acquittal of these two respondents – accused.

12. As regards case against respondent – accused Kumpaji Sonaji, prosecution examined P.W. 1 Abbasmiya Thakarmiya at Exh. 10. The witness was Assistant Sub-Inspector (A.S.I.) at Palanpur and had accompanied the complainant and panchas to recover counterfeit currency notes from respondent accused Kumpaji. According to the witness, he along with P.S.I. Khant and other staff members carried out search of person of respondent – accused Kumpaji and recovered three counterfeit currency notes in the denomination of Rs.500/-. According to him, those counterfeit currency notes were different in size and colour from the genuine currency notes. In the cross-examination, the witness admitted that on inquiry from respondent – accused Kumpaji Sonaji about counterfeit currency notes, he informed that one counterfeit currency note was given by his maternal uncle Mulaji Dharmaji and two counterfeit currency notes were given by respondent – accused

Rameshbhai Rupshibhai Doshi and the counterfeit currency notes were with him since one week. The witness also admitted that no other incriminating material was found from the shop and counterfeit currency notes were not fresh but found to have been used in circulation. The witness also deposed that during investigation of the offence, it was not found that respondent – accused Kumpaji was aware that currency notes were counterfeit currency notes. The witness also admitted that no counterfeit currency note was found from field of respondent - accused Kumpaji Sonaji. The witness denied that muddamal currency notes were looking like genuine currency notes at first sight. Analysing the deposition of this witness, it appears that the respondent accused was not knowing that muddamal currency notes were counterfeit currency notes. The evidence indicates that the muddamal counterfeit notes were allegedly used in selling goods. There is no evidence to indicate that respondent – accused Kumpaji knowingly used the counterfeit currency notes and took any advantage. It also appears that respondent – accused Kumpaji is a rustic villager and

therefore it cannot be expected that he would minutely observe the currency notes given to him. It also appears that respondent – accused Kumpaji was in possession of the notes since about 8 days. If a person is transacting in counterfeit notes he would not keep them in possession for such a long time but would try to use them as early as possible. Moreover, evidence indicates that only three counterfeit notes were recovered. A person transacting in counterfeit notes would not possess only three notes. Therefore, it is difficult to believe that respondent – accused Kumpaji used the counterfeit currency notes as genuine and possessed them knowing that the currency notes were counterfeit currency notes and intended to use them as genuine.

13. The prosecution also examined P.W. 2 Bababhai Jivabhai at Exh. 11. The witness was a member of raiding party. The evidence of this witness indicates that no incriminating material was found from the shop, field or residence of respondent – accused Kumpaji. It also appears that on inquiry with regard to the muddamal counterfeit currency notes,

respondent – accused Kumpaji informed them that the counterfeit currency notes were given by other respondents – accused. The witness also admitted that only after comparison with the genuine currency note, it was found that the muddamal currency notes were counterfeit currency notes. The evidence of this witness does not indicate that respondent -Kumpaji was knowing that the muddamal currency notes were counterfeit currency notes and was in possession of the same knowing that the same were counterfeit and was intending to use the same as genuine.

14. The prosecution examined P.W. 3 Jamtaji Hindu Waghela at Exh. 12. The witness was serving in LCB office at Palanpur at the relevant point of time and was a member of the raiding party. The evidence of this witness indicates that the muddamal counterfeit currency notes were smaller by one thread and there was marginal difference between the muddamal counterfeit currency notes and Government currency notes. The evidence of this witness also indicates that no other incriminating materials or counterfeit currency notes were recovered from the shop or

residence of respondent – accused Kumpaji. The witness admitted that only after comparison with genuine currency notes, it was found that the muddamal currency notes were counterfeit currency notes. The evidence of this witness also indicates that he did not find that respondent – accused Kumpaji was trafficking in counterfeit currency notes. In view of this evidence it appears that there was marginal difference between the two notes and even the witness could not notice that the muddamal notes were counterfeit but only came to know when they were compared with genuine currency notes. Therefore, it is difficult to believe that respondent - accused Kumpaji who was a rustic villager would be able to know from appearance of the notes that they were counterfeit notes. Therefor, in our view, it is difficult to believe that respondent – accused Kumpaji was knowing that he was in possession of counterfeit currency notes and was intending to use the same as genuine.

15. The prosecution also examined panch witness; P.W. 4 Premaji Ranchhodji at Exh. 13 and P.W. 5 Mafatsing Vasantsing Waghela at

Exh. 15 to prove panchnama Exh. 14. However, the panchas have turned hostile and did not support the prosecution case. The witnesses were confronted with the contents of panchnama Exh.14 but nothing is elicited from their evidence.

16. The panchnama Exh. 14 indicates that the muddamal counterfeit currency notes were recovered from respondent – accused Kumpaji Sonaji. However the panchas have not supported prosecution case with regard to recovery of muddamal.

17. The prosecution examined Investigating Officer P.W. 6 Kalusinh Bhathisinh Khant at Exh. 16. According to the witness, on receiving information that respondent – accused Kumpaji was in possession of counterfeit currency notes in denomination of Rs.500/- and was using the same as genuine, raid was carried out in presence of panchas and muddamal counterfeit currency notes were recovered after drawing panchnama Exh. 14 and the muddamal counterfeit currency notes were sent to Indian Security Press. Government of India, Nashik Road for obtaining opinion and

statement of witnesses were recorded. The witness admitted in the cross-examination that respondent – accused Kumpaji informed him that the muddamal counterfeit currency notes were with him since 8 days and it was found during investigation that respondent – accused Kumpaji had received the muddamal counterfeit currency notes during his business transaction. The witness also admitted that the muddamal counterfeit currency notes were having different series number and no other incriminating materials were found during search and no independent evidence was recovered to indicate that the respondent – accused Kumpaji was trafficking in counterfeit currency notes. In view of this evidence, it clearly emerges that there is no independent cogent and reliable evidence to indicate that respondent – accused Kumpaji was trafficking in counterfeit currency notes and was in possession of such counterfeit currency notes knowing or had reason to believe the same to be counterfeit and was intending to use the same as genuine.

18. The prosecution produced complaint at Exh. 19. It appears from complaint that on

receiving information raid was carried out in presence of two panchas and the muddamal counterfeit currency notes were recovered from respondent – accused Kumpaji. It also indicates that on inquiry with regard to possession of counterfeit currency notes, respondent – accused Kumpaji informed them that one counterfeit currency note was given by Mulaji Dharmaji Patel before about 8 days against purchase of 'bidi' and match-box and two counterfeit currency notes were given by respondent – accused Rameshbhai Rupshibhai Doshi and thereafter complaint was filed. The complaint does not indicate source of information received by the complainant. Therefore, respondent – accused Kumpaji cannot be connected with the offence on the basis of complaint.

19. The prosecution produced report given by Indian Security Press, Government of India, Nashik Road in respect of the muddamal currency notes at Exh. 21. It indicates that the muddamal currency notes were different from genuine currency notes and there was imitation of main water mark and security thread. It also indicates that

paper was slightly thicker than the genuine note-paper and ink shades did not match with the shades of genuine note and colours were water soluble. It also indicates that fronts and backs register was not correct and numbering style did not match with the style of genuine note. The report indicates that the muddamal currency notes were counterfeit currency notes.

20. In view of above, it clearly emerges that the prosecution failed to prove beyond reasonable doubt that respondent – accused Mavaji Mulaji Patel used counterfeit currency notes in denomination of Rs.500/- against purchase of 'bidi' and matchbox and gave it to the respondent – accused Kumpaji and that respondent – accused Rameshbhai Rupshibhai Doshi gave counterfeit currency notes to respondent – accused Kumpaji in business transaction of grocery and thereby used muddamal counterfeit currency notes as genuine. The prosecution also failed to prove that the respondents - accused were knowing and had reason to believe that muddamal currency notes were counterfeit currency notes and were intending to use the same as

genuine and thereby abetted in commission of the offence. Therefore, the learned trial Judge was justified in not relying upon the evidence to connect the respondents – accused with the offence and thereby acquitting the respondents.

21. In view of above, in our view, the learned trial Judge was justified in recording acquittal of the respondents and no interference is warranted in the impugned judgment. Hence, the appeal fails and stands dismissed.

(J.R. Vora,J.)

(Bankim N. Mehta, J.)

/JVSatwara/